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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/635,062	08/05/2003	Robert Hamilton	WEYE121482/25270(RP)	1309

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EXAMINER

GRAY, JILL M

ART UNIT PAPER NUMBER

1774

DATE MAILED: 10/04/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/635,062

Applicant(s)

HAMILTON ET AL

Examiner

Jill M. Gray

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date: 2/8/04
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date: ____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____

DETAILED ACTION

Claim Rejections - 35 USC § 102

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-19 are rejected under 35 U.S.C. 102(e) as being anticipated by Gatto, US 2004/0170589 A1.

Gatto teaches an article for absorbing fluids comprising cellulose fibers, superabsorbent material and a lotion composition containing oil applied thereto, per claims 1, 11, 15 and 18-19. See [0075]. The cellulose fibers can be wood pulp as required by claim 12. See [0066]. The oil is of the type contemplated by applicants in claims 3-8, 13-14, and 16-17 and can be applied in amounts ranging from 0.0001% to 10% by weight, as required by claims 9 and 10. It should be noted that Gatto teaches that the lotion composition can be applied to the absorbent core. This teaching necessarily embraces the oil being present on the fibers as well as being present on the superabsorbent material (claims 11 and 15). See [0075]. As to the melting point of the oil in claim 2, Gatto teaches the same oils contemplated by applicants; accordingly, the examiner has reason to believe that this property is the same as well. It is well established that the same compounds/compositions necessarily have the same properties.

Therefore, the prior art teachings of Gatto anticipate the invention as claimed in the present claims.

Claims 1-19 are rejected under 35 U.S.C. 102(e) as being anticipated by Warren et al, US 2004/0167479 A1 (Warren).

Warren teaches an absorbent article comprising cellulose fibers, which can be wood fibers, superabsorbent material and a skin care composition comprising oil applied thereto, as required by claims 1, 11-12, 15 and 18-19. See [0061]-[0063] and [0154]. The oil is of the type contemplated by applicants in claims 3-9, 13-14, and 16-17. See [0119] and [0138]. As to claim 2, Warren teaches the same oils contemplated by applicants. Accordingly, the examiner has reason to believe that this property is the same as well. It is well established the same compounds/compositions necessarily have the same properties. As to claims 9 and 10, Warren teaches that the oil can be added in amounts ranging from 0.0001% to 10% by weight. See [0138]. It should be noted that Warren teaches that his composition can be added to the absorbent core. This teaching necessarily embraces the oil being present on the fibers as well as being present on the superabsorbent material (claims 11 and 15). See [0162].

Therefore, the prior art teachings of Warren anticipate the invention as claimed in the present claims.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double

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patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-14 provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-10 and 11 of copending Application No. 10/741,231. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims have overlapping subject matter in a genus species relationship.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

No claims are allowed.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

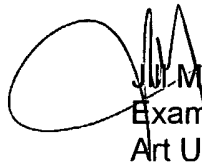
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jill M. Gray whose telephone number is 571-272-1524.

The examiner can normally be reached on M-F 10:30-7:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena Dye can be reached on 571-272-3186. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


J. M. Gray
Examiner
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jmg